

CHAPTER 6: ZONING

6.1 ZONE DISTRICTS AND ZONE DISTRICT MAP

In order to carry out the purposes of this Title, Zone Districts have been established as described in Chapter 7 of the Land Management Code (LMC) and identified on a Zone District Map that is made part of this Title by reference. In the interpretation of the map, the Zone District boundary lines are generally intended to conform to the property lines or along the center lines of the public right-of-way, unless such boundary lines are established by fixed dimension (meets and bounds) as shown on the map.

Each Zone District description in Chapter 7 of the LMC includes one or more of the following categories of regulations:

- Purpose
- Permitted Uses
- Conditional Uses
- Physical Requirements

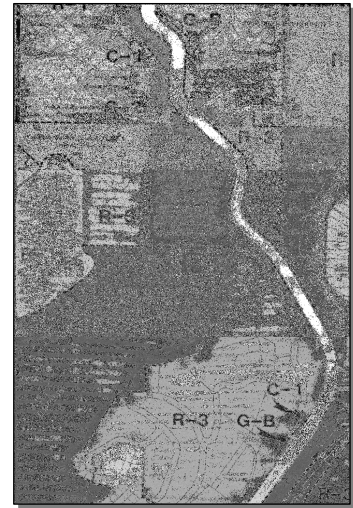


Figure 5.1: Example of a District Map Zone.

6.2 LAND USE MUST BE CONSISTENT WITH ZONING ORDINANCE

Any building or structure erected, constructed, altered, enlarged, converted, moved or maintained contrary to provisions of this Title; and any use of land, building or premises established, conducted or maintained contrary to provisions of this Title shall be, and the same hereby is, declared to be unlawful and a public nuisance. The Town Attorney, upon request of the Brian Head Town Manager or Council, shall take such steps as necessary to cause removal of such structure(s) and/or uses.

The remedies provided for herein shall be cumulative and not exclusive, meaning that if it is not explicitly permitted, it is prohibited.

6.3 AMENDMENTS TO THE ZONE DISTRICT MAP

The Zone District Map may be amended as provided below. The required fee for zone change applications to cover the cost of processing and review is indicated in the Consolidated Fee Schedule that is available by request at Town Hall or on the Town Website.

6.3.1 REVIEW PROCESS

a. PLANNING COMMISSION

The proposed amendment shall be submitted to the Planning Commission with documentation as prescribed in Chapter 4, Submittal Requirements. Within a reasonable time after receiving the proposed amendment the Planning Commission shall hold a public hearing on the proposed amendment, and shall forward a recommendation to the Town Council for approval, modification and approval, or denial of the proposed zone amendment by following the procedures described by Utah Code Ann. § 10-9a-502, and 503, as amended, and this Title, and in accordance with the criteria below. The Planning Commission may initiate its own amendments.

b. TOWN COUNCIL

Following the Planning Commission public hearing the Brian Head Town Council shall also convene a public hearing to receive public comment regarding the proposed amendment. Once a recommendation is forwarded from the Planning Commission to the Town Council, the Council shall reject, or adopt the proposed amendment either as proposed by the Planning Commission or after making any revision that the Town Council considers appropriate.

6.3.2 STANDARDS FOR REVIEW

The Planning Commission and Town Council shall consider whether the proposed amendment meets the following standards and conditions:

- a. addresses a recognized and demonstrated need in the community;
- b. will be compatible with the character of the neighborhood and surrounding structures in use, scale, mass and circulation;
- c. will not result in an over-intensive use of the land or excessive depletion of natural resources;
- d. will not have a material adverse effect on community capital improvement programs;
- e. will not require a level of community facilities and services greater than that which is available; or will be made available.
- f. will not result in undue traffic congestion and traffic hazards;
- g. will not cause significant air, odor, water, light, or noise pollution;
- h. will not otherwise be detrimental to the health, safety, or welfare of the present or future inhabitants of Brian Head Town.

6.4. NONCONFORMING BUILDINGS AND USES

6.4.1. MAINTENANCE PERMITTED

A nonconforming building or structure may be maintained.

6.4.2. CONTINUANCE OF NONCONFORMING USE OF BUILDINGS, STRUCTURES AND LAND

Except as otherwise provided in this Title, a nonconforming use of land or a structure may be continued:

a. Determination of Nonconforming Buildings and Uses.

Except as provided for in this paragraph all matters regarding the nonconforming use of structures and land shall be determined by the Appeal Authority. Upon application, after public hearing on the matter, the Appeal Authority shall determine if the use or structure is nonconforming with respect to the current provisions of this Chapter. The Zoning Administrator may verify and determine routine and uncontested requests to verify nonconforming uses as provided in this section and the rules adopted by the Appeal Authority.

b. Alteration or Modifications to Nonconforming Buildings and Structures.

Nonconforming buildings and structures with respect to setbacks or height may be continued. Additions, enlargements or structural alterations may be made to the extent that they comply with all requirements of the Brian Head Town Code.

c. Nonconforming Use of Land.

Except as otherwise provided by law, including statutory and case law, nonconforming use of land lawfully existing on the effective date of the Ordinance rendering it nonconforming may be continued and maintained provided such nonconforming use shall not be expanded or extended into any other open land, except as otherwise provided in this Chapter. If the nonconforming use is discontinued for a continuous period of more than one year, it shall constitute an abandonment of the use, and any future use of such land shall conform to the provisions of the zone in which it is located.

d. Nonconforming Use of Buildings and Structures.

The nonconforming use of a building or structure lawfully existing on the effective date of the Ordinance rendering it nonconforming may be continued and the building or structure maintained, and the use may be expanded or extended throughout such building or structure, provided no structural alterations, except those permitted by law, are proposed or made for the purpose of extension or expansion. (The addition of a solar energy device to a building shall not be considered a structural alteration.) If such nonconforming use is discontinued for a continuous period of more than one year, it shall constitute an abandonment of the use and any future use of the building or structure shall conform to the provisions of the zone in which it is located.

e. Change in Status of Nonconforming Use.

If a nonconforming use is discontinued, it may be succeeded, upon approval of the Zoning Administrator, as provided in this section, by an equally intensive or less intensive nonconforming use, provided such change is effected within one year from the first day of discontinuance. After a change to a less intensive use occurs, the use may not change back to a more intensive use.

f. Alterations or Modifications to Nonconforming Use.

A use which has been declared nonconforming shall not be enlarged or moved except as provided in this section.

g. Reconstruction of Nonconforming Building or Structure Partially Destroyed.

A nonconforming building or structure occupied by a nonconforming use which is damaged or is destroyed by fire, flood, wind, earthquake or other calamity or Act of God, or the public enemy, or is removed due to dilapidation, may be restored and the occupancy or use of such building, structure, or part thereof, which existed at the time of such damage or destruction may be continued or resumed, provided that such restoration is started within a period of one (1) year and is diligently prosecuted to completion as evidenced by an active building permit. If any such restoration is not commenced within one (1) year, the structure shall be deemed to be abandoned and every future building or structure occupying the portion of the land on which the building or structure was located shall conform to the current provisions of this Title.

h. Amortization of Nonconforming Uses.

Except as otherwise provided by the Utah Code, the Appeal Authority, under authorization of the Utah Code, may provide for the timely modification or removal of a nonconforming structure or use of land. After appropriate financial studies to determine a valid amortization schedule, the Appeal Authority may establish a reasonable time period during which the owner may recover or amortize the amount of investment in the nonconforming use, and after which the nonconforming use shall be modified or removed in order to comply with the General Plan and zoning ordinance.